

RF DEVELOPMENT, LLC

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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: ET Docket No. 04-373 SafeView, Inc., Request for Waiver of Sections 15.31 and 15.35 of the Commission's Rules

Ms. Dortch:

On behalf of RF Development, LLC, pursuant to Section 1.1206(b)(1) of the Commission's Rules, I am electronically filing this written *ex parte* communication.

This responds to the December 20, 2005, filing of SafeView, Inc.

Safeview, Inc. Does Not Address Request for Market Place Resolution

Safeview, Inc. in its December 20, 2005 letter to the Commission does not address RF Development, LLC's recommendation that it first seek permission to use LMDS spectrum by working directly with the licensees. RF Development, LLC encourages the Commission to allow a market place solution to resolve the issue. We are reasonable confident that SafeView, Inc. and the licensees can resolve all issues of spectrum use without involvement from the FCC. It is our basic contention that in matters concerning spectrum which has been assigned to licensees following a sanctioned FCC auction, that the matters should first be allowed to be resolved between the licensees and other parties. This process has not been considered by SafeView, Inc. If the FCC wishes to embrace market place solutions, as it should in this particular instance, it should be the venue of last resort, not first. SafeView Inc.'s failure to address this question is dismissive of the rights of LMDS licensees and precludes a market place solution. Without first working directly with the licensees, Safeview needlessly squanders the legal and regulatory resources of the FCC.

SafeView Inc.'s Assertion That Licensees Seek Veto Power Is Untrue

Safeview, Inc. contends that licensees are seeking an “*a priori* veto over non-interfering devices.”¹ This is simply not true. RF Development, Inc, is absolutely not seeking to veto use of (possibly) non-interfering devices. In fact, RF Development, Inc. welcomes a discussion with SafeView, Inc. for operation on its frequency authorities. SafeView’s contention that RF Development, LLC seeks to prevent them from using our spectrum authorities is simply wrong. Had SafeView, Inc. first sought permission to operate its devices on our spectrum authorities, we would have readily negotiated a use agreement in good faith.

SafeView Inc.'s Contentions Regarding Non-Interfering Spectrum Use

SafeView, Inc. contends that the U.S. Court of Appeals for the D.C. Circuit

AT &T Wireless Services, Inc. v. FCC, 270 F.3d 959 (D.C. Cir. 2001) decision supports its position.² The facts in this case, however, support RF Development’s contention that SafeView, Inc. first negotiates a use agreement with LMDS licensees.

AT&T Wireless Services, Inc. Case Summary

In the subject case, petitioners AT&T Wireless Services, Inc., Bell South Cellular Corp., SBC Wireless, Inc., and Cellco Partnership were all cellular telephone companies that objected to an airline based cellular business proposed by AirCell. The petitioners objected the waiver the Federal Communications Commission Bureau of Wireless Telecommunications granted to AirCell, Inc. and to the cellular licensees that had entered into resale agreements with AirCell to provide airborne cellular telephone services. The appeals court agreed with the Federal Communications Commission orders by the Bureau of Wireless Telecommunications to grant a waiver of 47 C.F.R. § 22.925 for two years to permit AirCell, Inc. to pursue its business.

¹ Letter from Mitchell Lazarus, Counsel for SafeView, Inc. to Marlene H. Dortch, Secretary, FCC at paragraph 5. Filed December 20, 2005.

² *Id.* At paragraph. 4.

What is pertinent in this decision to RF Development, LLC's request, is the fact that the FCC only granted AirCell's original wavier response *after it had first entered into agreements with the licensees for secondary use of their spectrum*. In summarizing the history of the case, the appeal decision reports this fact:

"On October 9, 1997, AirCell filed a petition requesting that the Commission waive, among other things, § 22.925 of its rules to permit commercial deployment of AirCell service. **Ten months later, AirCell and a number of cellular licensees entering into resale agreements with AirCell filed an amended petition to join the waiver request, thereby establishing that the participating licensees had agreed to modifications of their existing cellular licenses to authorize this secondary use of their licensed spectrum.** The Bureau of Wireless Telecommunications ("Bureau") conditionally granted the waiver requests on December 24, 1998."³

Ultra Wideband Proceedings Do Not Support Authorization

In the *Second Report and Order and Second Memorandum Opinion and Order* in ET Docket No. 98-153, the FCC responded to numerous responses which focused on the interference potential of UWB devices. In the order, the FCC authorized use of UWB devices for operation in licensed spectrum only after it imposed operational restrictions and technical standards that "were established to ensure that UWB devices can coexist with the authorized radio services without risk of harmful interference while we gain additional experience with this technology."⁴ In the present case, SafeView, Inc. wishes to secure authorization, despite the fact that harmful interference, based on the current guidelines in Part 15, is projected to occur.⁵

Conclusion

SafeView, Inc.'s response, to date, does not address RF Development, LLC's concern that the Company first seeks permission to use LMDS spectrum directly with the licensees. Secondly, SafeView, Inc. has not demonstrated that their product can coexist with authorized radio services without risk of harmful interference. Both of these matters can be most efficiently resolved by SafeView, Inc. if it first works directly with the licensees.

³ AT&T Wireless Services, Inc. v. FCC, 270 F.3d 959 (D.C. Cir. 2001) at paragraph 6.

⁴ Second Report and Order and Second Memorandum Opinion and Order in ET Docket No. 98-153 at paragraph 5.

⁵ Letter and Exhibit from XO Communications, Inc. and Hughes Network Systems, Inc. filed with Marlene H. Dortch, Secretary, FCC on November 18, 2005.

Respectfully Submitted,

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RF Development, LLC